

Quarterly Report
OF THE
ATTORNEY GENERAL
OF
ALABAMA



FOR THE PERIOD
FROM OCTOBER 1, 1975
THROUGH DECEMBER 31, 1975

WILLIAM J. BAXLEY, Attorney General

VOLUME 161

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Q U A R T E R L Y R E P O R T

of the

ATTORNEY GENERAL

of

A L A B A M A

For the Period

From October 1, 1975

Through December 31, 1975

**TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS
OF ALABAMA:**

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from October 1, 1975, through December 31, 1975, is published in compliance with the provisions of Title 55, Section 228 Code of Alabama, 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State, and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy district attorney of his county. The section also requires that I send a copy of this report to each district attorney and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, County, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

WILLIAM J. BAXLEY

Attorney General

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October 1, 1975

Honorable W. J. Williamson
Attorney at Law
Greenville, Alabama 36037

Prisons and Prisoners—Courts—Recorders Court

Act No. 58, Second Special Session Alabama Legislature, approved March 10, 1975, which allows presentence jail credit, applies to any sentencing court including recorders court.

Opinion by Assistant Attorney General Larry R. Newman

Dear Mr. Williamson:

Your request for an official opinion, is as follows:

"The undersigned is City Attorney for the City of Greenville, Alabama. This inquiry relates to the application of Act No. 58 of the Second Special Session of the Alabama Legislature, 1975, approved March 10, 1975 as it relates to Recorders Courts in the State of Alabama.

"This act provides that 'Upon conviction and imprisonment for any felony or misdemeanor, the sentencing court shall order that the convicted person be credited with all of his actual time spent incarcerated pending trial for such offense.'

"But the next sentence states that this time 'shall be certified by the circuit clerk, on forms to be prescribed by the Board of Corrections.'

"This letter language would indicate that it applies only to circuit court; but the former language would indicate that it would apply to any 'misdemeanor' in any sentencing court. The Recorders Court of the City would be such a court.

"To avoid any confusion, we request your opinion as to whether or not this act is applicable to Recorders Courts in the State of Alabama.

"Your advice would be appreciated."

Act No. 58, Second Special Session, Alabama Legislature, approved March 10, 1975, is applicable to all persons convicted of any felony or misdemeanor on or after March 10, 1975. **Formal Opinion of the Attorney General to Hon. Ed W. Harwell, dated, March 31, 1975.** Further, only those persons convicted of a felony can be sentenced to the penitentiary and to the custody of the Board of Corrections. Title 15, Section 325, Code of Alabama 1940 (Recompiled 1958). Therefore, the second sentence of Section 1, Act No. 58, supra., which states that the actual time spent incarcerated pending trial shall be certified by the circuit clerk, on forms to be prescribed by the Board of Corrections, merely sets out the method by which presentence jail credit of those persons convicted of a felony and committed to the

custody of the Board of Corrections shall be certified to them. This sentence does not limit the scope of the law whatsoever in that it is apparent from the wording of the act that the Legislature intended that those persons convicted of a misdemeanor be given presentence jail credit also.

It is then the opinion of this office that all persons convicted of any felony or misdemeanor, regardless of the sentencing court, on or after March 10, 1975, shall receive jail credit for any time spent incarcerated pending trial.

Sincerely,

WILLIAM J. BAXLEY
Attorney General

October 15, 1975

Honorable Judson C. Locke, Commissioner
Alabama Board of Corrections
101 South Union Street
Montgomery, Alabama 36104

Prisons and Prisoners — Board of Corrections — Good
Time Credit

1. A state prisoner who must serve his penitentiary sentence in a county jail due to a federal court injunction which has enjoined the transfer of any more prisoners to the state penitentiary, would be entitled to the same considerations of good time credit available under Alabama law, just as if he were actually in the state penitentiary.
2. Under these same conditions, the Board of Corrections may discharge a state prisoner from somewhere other than a state penal institution.

Opinion by Assistant Attorney General Newman.

Dear Sir:

This office is in receipt of your request for an opinion as to whether or not a prisoner who has been sentenced to a term in the state penitentiary, but must serve his sentence in a county jail due to a federal court injunction which enjoins the Alabama Prison System from accepting any more male prisoners until the current prison population is reduced to designed capacity, is entitled to good time credits available under Alabama law; and, further, can he be discharged from somewhere other than the state penitentiary?

Although these precise questions have not been specifically litigated to a final judicial determination in either the courts of the State of

Alabama or the United States, some guidance is provided by a recent court order (a copy of which is attached) in **McCray v. Sullivan**, C.A. No. 5620-69-H (S. D. Ala.), **Pugh v. Sullivan**, C.A. No. 74-57-N (M.D. Ala.), and **James v. Wallace**, C.A. No. 74-203-N (M.D. Ala.), rendered on October 9, 1975. In that order the Federal Court said that a review of the Alabama statutes (Title 45, Sections 54 and 253, 1973 Cumulative Supplement, Code of Alabama 1940, Recompiled 1958, among others) advanced by defendants in support of their motion (to transfer state prisoners from the county jail ten days prior to release in order to comply with Alabama law) indicates that the physical transfer of inmates from city or county to state facilities is not required.

Further, a state prisoner does not lose all of his constitutional rights merely because of incarceration, **Washington v. Lee**, 263 F. Supp. 327, 331 (M.D. Ala. 1966), *aff'd per curiam*, 390 U.S. 333, 88 S. Ct. 994, 19 L. Ed 2d 1212 (1968), and most certainly not his Fourteenth Amendment rights to due process and equal protection. **Washington v. Lee**, *supra*; see also **Diamond v. Thompson**, 364 F. Supp. 659 (M.D. Ala. 1973). Moreover, even though the statutes to which you refer (Title 45 Sections 54 and 253), almost certainly presume that a person sentenced to the state penitentiary will serve his sentence therein, any requirement that such be done would be all but impossible because of the Federal Court injunction the Alabama Board of Corrections is presently under.

Therefore, based upon the above, it would be the opinion of this office that under the present conditions, a state prisoner having to serve his term in a county jail through no fault of his own would be entitled to good time credit, and that the Board of Corrections may discharge him from somewhere other than a state penal institution.

This opinion, however, is limited to only this situation, and is not intended to apply to any other class of prisoner other than that specifically referred to in the above; that is, a person under sentence to the state penitentiary, but is barred from the state penitentiary due to a Federal Court injunction.

Yours very truly,

WILLIAM J. BAXLEY
Attorney General

October 16, 1975

Honorable J. L. Klinefelter
Burnham, Klinefelter, Halsey & Love
Attorneys at Law
Commercial National Bank Building
P. O. Box 1618
Anniston, Alabama 36201

Juveniles — Taxation — Department of Youth
Services — Exemptions

Maintenance of detention facilities for juvenile delinquents constitutes important police power of state and hence; operators of youth detention facility under license from Department of Youth Services entitled to governmental immunity.

Opinion by Assistant Attorney General James R. Payne.

Dear Mr. Klinefelter:

This will acknowledge your letter of August 15, 1975 requesting opinion as to the governmental status of the Coosa Valley Regional Juvenile Center, Inc. This corporation will hereafter be referred to as "Coosa". With your letter you enclose letter dated June 19, 1975 from the Department of Industrial Relations in connection with the Alabama Unemployment Compensation Law; memorandum from Internal Revenue Service dated February 25, 1975 with respect to federal income and other taxes. In response to our telephone conversation of recent date your office has forwarded by letter dated October 3, 1975 copies of Coosa's Certificate of Incorporation and By-Laws.

"Coosa" exists by reason of the provisions of §10, Act # 816, 1973 Acts, p. 1261, hereinafter referred to as the Act. Section 10 provides for youth detention facilities. The section provides that a county or counties **"acting together"** may, upon the express written agreement of each such county or such counties acting together," may receive funds from the Department of Youth Services to carry on the function of "detention care." "Any county, or counties acting together, which retain control of such detention functions and detention facilities, and which **continue to have financial responsibility for their operation . . .**". (Emphasis Added) More about §10 presently.

Here, it may be well to consider the nature and function of the Department of Youth Services. Section 3 of the Act creates a Department of the State "to be known as the Department of Youth Services." The Department of Youth Services will hereinafter be referred to as Department. Section 1 of the Act in part, is as follows:

"The purpose of this Act is to promote and safeguard the social well-being and general welfare of the **youth** of the state through a comprehensive and coordinated program of **public services for the prevention of juvenile delinquency and the rehabilitation of delinquent youth.** This State program shall provide the following: **social and educational services and facilities for any youth whom a juvenile judge deems in need of such state services; the establishment of standards for social and educational services and facilities for such youth; . . .**" (Emphasis Supplied).

Section 2 of the Act defines certain terms. Under sub-paragraph (n):

“(n) ‘Legal custody’ means a legal status created by a court order embodying the following rights and responsibilities: the right to have physical possession of the youth; **the right and the duty to protect, train and discipline him**; the responsibility to provide him with food, clothing, shelter, education, and medical, dental and hospital care; and the right to determine where and with whom he shall reside.” (Emphasis Supplied).

Under sub-paragraph (u):

“(u) ‘Youth Services’ means the duties and functions which are authorized or required by this Act to be provided by the department with respect to the **establishment and enforcement of standards of treatment for youths**.” (Emphasis Supplied).

Section 13 of the Act relates to the “Duties and Functions of Department.” Some of these duties are to provide for the expansion of local detention care for youths alleged to be delinquent pending court hearing; to encourage the expansion of juvenile probation services to youths alleged or adjudged to be delinquent, to provide for medical and incidental services “as may be needed for **committed youths**.” (Emphasis Supplied).

I have reviewed all of the various sections contained in the Act from 1 through 39 and there is absolutely no doubt but that the Department is acting in a governmental capacity in administering the provisions of Act # 816. Under Section 10 eight counties of the State have banded together in carrying out various functions related to youth detention. I am advised that each county pays its proportionate share, based on population basis, in maintaining the youth detention facilities and detention care. It must be borne in mind that the funds expended are of necessity tax funds of the counties. Mr. Al Shumaker, Attorney for the Cherokee County Commission requested opinion of this office as to whether funds may be appropriated out of the general fund of the county in order to maintain detention facilities being administered by “Coosa”. By opinion of March 27, 1975 to Mr. Shumaker this office held “that the County not only may appropriate funds for the purpose about which you inquire but **must** do so.”

Counties being political sub-divisions of the State, it is my opinion that the Legislatures’ intent by placing §10 in the Act, was to make a county or counties acting together an agent or agents of the Department in carrying out one of the most vital functions of the Act. Consequently reviewing the entire picture involved, it is my conclusion that “Coosa” is performing a governmental function or act in actually carrying out the duties provided and the acts of “Coosa” are in fact acts of the Department of Youth Services. Hence, “Coosa” is entitled to governmental immunity.

In your letter of August 15 you advised me in substance that since time was of the essence the governing body of "Coosa" was organized into a non-profit private corporation rather than a public corporation. Section 10 does not require incorporation in order to operate the detention facility; it may do so for the purpose of identity, etc. Saying that a corporation is organized as a private corporation does not govern as against the fact that the acts and operations of "Coosa" are totally public, as a perusal of the Act will disclose.

The situation depicted here is similar to that involved in **In re Opinions of the Justices**, 235 Ala. 485, 179 So. 535. There, the question was whether Housing Authorities under the Alabama Housing Authority law were exempt from certain ad valorem taxes on property belonging to the Housing Authorities. The Court in ruling on the question stated:

"The Housing Authority is to be a corporation brought into existence upon the order of a city government, public in nature, and charged with the duty of performing an important element of the police power of the city under whose sanction it shall come into existence. . . ." (Citations Omitted)
"When the city is performing a governmental function, it is none the less so because **it is done by the instrumentality of some administrative agency**, such as a board, commission, or even a corporation set up for that purpose, created by or for the city's use in that connection." (Emphasis Supplied).

"The mere fact that it is a corporation does not deprive it of the qualities of a governmental agency, **nor of the immunities of the government for which it operates**. . . ." (Citations Omitted) (Emphasis Supplied).

In sum the Court held that the Housing Authority is an administrative agency of the city, and its property was therefore for certain purposes that of a municipal corporation and entitled to the tax exemption in question. In the above connection, we can apply the holding of the Court to the case at hand by substituting Department of Youth Services for that of the "city" and substituting "Coosa" for Housing Authority.

In view of what has been pointed out above, it is my opinion that Coosa Valley Regional Juvenile Center, Inc. is performing a governmental function in the care and maintenance of youth detention facilities. Consequently, it is entitled to governmental immunity.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

October 28, 1975

Honorable Walker Hobbie, Jr.
Judge of Probate
Montgomery County
Post Office Box 223
Montgomery, Alabama 36101

Probate Judges — Costs and Fees.

Accepted printing industry standards should be used in determining print size for purpose of determining proper fee for filing and recording documents.

Opinion by Assistant Attorney General Stephens

Dear Judge Hobbie:

In your recent letter you noted that Act No. 556 of the 1975 Regular Session of the Alabama Legislature provides revised fee schedules for services rendered by probate judges and that the revised fee schedule pertaining to the filing and recording of documents uses print size as the determining factor as to the charge per page. Pursuant to this schedule the fee for filing and recording a document printed in 10 point type or larger is \$1.50 and the fee for filing and recording a document printed in smaller than 10 point type is \$5.00 per page.

Your letter further notes that you have been using a definition of "10 point type" which is different from that used in the printing trade. To assist you in the determination of the proper fee to be charged you have requested our opinion as to which definition should be used.

Although it uses the term, Act 556 does not itself define the term "10 point type." In the absence of a specific definition in the statute, the Legislature is assumed to have used a term in its commonly used sense and to have meant for the term to be interpreted according to its general definition. Where the term in question relates to a particular industry or trade, the term should be given the meaning which is normally given to it in that trade.

Act No. 556 clearly refers to printed documents and, thus, the trade usage of the term 10 point type within the printing industry must be consulted for the proper definition. The size type used by printers is the proper standard to be used in determining the fees to be charged pursuant to Act No. 556.

Sincerely,

WILLIAM J. BAXLEY
Attorney General

October 29, 1975

Mr. Frederick T. Carney
Assistant Regional Counsel
Internal Revenue Service
Room 724
2121 8th Avenue N.
Birmingham, Alabama 35203

Probate Judges — Costs and Fees

Pursuant to Act 556 of the 1975 Regular Session of the Alabama Legislature the fee provided for filing and recording documents is the total fee to be charged for filing and recording a notice of federal tax lien and no additional fee should be charged for such lien as a certificate without seal.

Opinion by Assistant Attorney General Stephens

Dear Mr. Carney:

In your recent letter you stated that some probate judges were charging a fee of \$2.00 for the filing and recording of a notice of federal tax lien. This \$2.00 fee is the accumulation of a fee of \$1.50 for filing and recording documents and an additional \$.50 fee for filing a certificate without seal. With respect to this application and interpretation of the newly enacted probate court fee schedule you stated:

"We believe that this interpretation is erroneous and is a doubling up of fees that are intended for entirely different documents. We believe that the fees prescribed for filing certificates with and without seals and for filing and docketing each claim all refer to instruments filed in connection with the probate of an estate. Our position is that the words 'Filing and recording, including recording documents filed for record ***' is all inclusive for the duties to be performed by the offices of judges of probate in connection with the recording of notices of federal tax liens."

Consequently, you stated:

"It will be appreciated if you will issue your advisory opinion to the effect that the proper filing fee for filing and recording a notice of federal tax lien is \$1.50. Further, that any charges made on or since October 1, 1975 that were in excess of such amount should be credited to the costs of future filings or should be refunded. Judge Martha Kirkland, president of the Association of Probate Judges of Alabama, states that she would also welcome your opinion in view of the importance to the Service and a disparity of opinion among the judges."

I am of the opinion that you are correct in your interpretation of this fee schedule. The fee provided for filing and recording a document

is the total and inclusive fee to be charged with respect to a notice of federal tax lien. The additional fee of \$.50 for a certificate without seal should not be charged.

Sincerely,

WILLIAM J. BAXLEY
Attorney General

October 29, 1975

Judge Robert H. Kirksey
Judge of Probate
Pickens County Courthouse
Carrollton, Alabama 35447

Board of Registrars — Mileage Expenses.

Pickens County Board of Registrars are entitled to mileage expenses pursuant to Title 55, Section 488(3) Code of Alabama (Recompiled 1958) for the process of providing notice of registration, pursuant to Title 17, Section 26, Code of Alabama 1940, (Recompiled 1958), subject to approval of those expenses by the chairman of said board.

Opinion by Assistant Attorney General Ward.

Dear Judge Kirksey:

This office is in receipt of your letter of September 15, 1975 in which you requested an opinion as to the following question:

"Do the provisions of Section 488(1) of Title 55, entitled 'Limitation of Per Diem Expenses' apply to Board of Registrars performing their functions within a county so as to permit a county commission to pay travel or per diem expenses to the members of the board as prescribed in said code section?"

(The section that you cited in your opinion request has been amended and is now contained in Title 55, Section 488(1), Code of Alabama 1940 (Recompiled 1958))

The answer to this question is in two parts:

(a) The county commission would not be the entity paying mileage expenses pursuant to the cited section rather;

(b) The State would pay reasonable mileage expenses pursuant to the cited section conditioned on the prior approval of those expenses, before submission, of the chairman of the Pickens County Board of Registrars.

The first step to be taken in analyzing this problem is the interpretation of Title 17, Sections 24 and 24(1), Code of Alabama, as

amended. These sections, in essence, provide that each registrar in all counties shall receive \$20.00 per day for each days attendance of the registrar upon the session of the board. (Emphasis added) This section has been previously construed in three Attorney General opinions to mean that a registrar is allowed expenses only pursuant to this statute, to the exclusion of all other statutes involving mileage expenses, and when the board of registrars is in session. Report of Attorney General, 1920-1922, p. 345; Report of Attorney General, 1930-1932, p. 464; Report of Attorney General, October-December, p. 43. The effect of these opinions was to preclude mileage expenses from all sources other than Title 17, Sections 24 and 24(1), *supra*.

One of these opinions, Report of Attorney General, 1920-1922, p. 345 defined sessions to be when the board of registrars held fixed meetings for registration [Title 17, Section 26, Code of Alabama 1940 (Recompiled 1958)]; provided for special registration [Title 17, Section 27, Code of Alabama 1940 (Recompiled 1958)]; purged registration lists [Title 17, Section 44, Code of Alabama 1940 (Recompiled 1958)]; and when the board held general meetings [Title 17, Section 47, Code of Alabama 1940 (Recompiled 1958)].

There is no argument with these opinions in limiting expenses pursuant to Title 17, Sections 24 and 24(1), *supra*, to days when the board of registrars is in session. However, it is my opinion that these opinions would not prevent the payment of mileage expenses on days when the Board is not in session pursuant to Title 55, Section 488(3) Code of Alabama 1940 (Recompiled 1958).

The reason for this is two-fold. First, Title 55, Section 488(3), *supra*, provides that those who are traveling on official business for the State or any of its boards, departments, institutions, bureaus, commissions, councils or committees in privately owned vehicles shall receive twelve cents per mile in lieu of their actual expenses for transportation. I am of the opinion that traveling to precincts, pursuant to Title 17, Section 26, *supra*, for the purpose of putting up notices informing the citizens of upcoming registration is traveling on official business of the State and mileage expenses would be permissible for periods up to and including six hours.

Second, Title 17, Section 26 commands the registrars to go through the prescribed statutory procedure of giving notice of the registration. They are mandated by law to perform this function. As already explained, the board of registrars is entitled to per diem for the actual registration session held as a result of their giving notice thereof. It seems incongruous not to allow mileage expenses, pursuant to Title 55, Section 488(3), *supra*, for the function and procedure that leads up to that meeting.

The importance of this function, that is giving notice of the upcoming period for voter registration, cannot be overemphasized. The core of an effective electoral process is the active participation and exercise of one's right to vote. The prerequisite necessary to exercise

this right intricately involves the board of registrars as they are charged with the responsibility of registering prospective voters. Such activity needs to be encouraged and can only be properly classified as being in the service of the State.

To assure the reasonableness of the mileage expenses requested pursuant to Title 55, Section 488(3) it is suggested that the approval of the chairman of the board of registrars be obtained before the expense request is submitted to the State for payment.

I trust this satisfactorily answers your question. If I can be of further assistance to you, please call upon me.

Sincerely,

WILLIAM J. BAXLEY
Attorney General

October 31, 1975

Honorable Ray D. Bass
Highway Director
State of Alabama
Highway Building
Montgomery, Alabama 36130

Honorable Martha Kirkland
Probate Judges Assoc.
Escambia County Courthouse
Brewton, Alabama 36426

Probate Judges — Commissions — Costs and Fees.

Probate Judges are not entitled to five percent commission on state and county licenses issued in the probate office by virtue of Act No. 556, infra.

Opinion by Assistant Attorney General Lawley.

Dear Mr. Bass:

This letter is in response to your letter dated October 27, 1975, which is as follows:

"Enclosed is a copy of Act No. 556 of the 1975 Regular Session of the Legislature. This Act revises the fee schedule for services rendered in probate offices and repeals Title 11, Section 29, Code of Alabama, 1940.

"The first paragraph on page 7 of this Act provides for Probate Offices to receive commissions of five percent on the amounts collected and paid over for state and county licenses. I have been informed that certain probate judges under the authority of this Act intend to increase the amount of the fee

for issuing motor vehicle license tags from two and one-half percent to five percent. The two and one-half percent commission which the probate judges have heretofore retained for the collection of auto license taxes is authorized by the Revenue Code, Title 51, Section 712, Code of Alabama, 1973 cumulative pocket part.

"If Act No. 556 is construed to have repealed the portion of Title 51, Section 712, providing for a two and one-half percent commission, the Highway Department will lose approximately one million dollars in revenue annually. The department would be unable to fund its current year appropriation.

"I am hereby requesting an official opinion as to whether the law authorizes the probate offices to retain commissions of five percent or of two and one-half percent on amounts collected for motor vehicle license fees.

"Inasmuch as the Highway Department is in need of this written opinion before it can finalize its internal budget for the current fiscal year, I would appreciate a response at your earliest convenience."

It is my opinion that probate judges are not entitled to a five percent commission on amounts collected and paid over on state and county licenses issued in the probate office by virtue of Act No. 556, *supra*. I base this conclusion on the fact that commissions for probate judges are not mentioned in the title to Act No. 556, which reads:

"Enrolled, An Act, To revise a fee schedule for services rendered in probate offices and establish a new schedule for such services; and to repeal Code of Alabama 1940, Title 11, Section 29, and other general laws of State-wide application in conflict herewith." (Emphasis added)

Act No. 556 deals entirely with establishing a new fee schedule for probate offices and its title in no way mentions changing the **commissions** to be received by probate judges.

Nothing may be included in the body of an act which is not expressed in or covered by the title. See Section 45 of the Constitution of Alabama 1901. Also, see *Wilkins v. Woolf et al*, 281 Ala. 693, 208 So. 2d 74. Therefore, it is my conclusion that the sentence dealing with probate judges' commissions which appears near the end of Section 1 of Act No. 556, *supra*, is unconstitutional since commissions are not mentioned in the title to the Act.

Although a statute may be invalid or unconstitutional in part, the part that is valid will be sustained where it can be separated from that part which is void. See *Wilkins v. Woolf et al*, *supra*. Section 2 of Act No. 556, *supra*, is a severability clause. Therefore, the new

probate office fee schedule contained in Section 1 of Act No. 556 is constitutional and may be collected by the probate judges of Alabama.

In view of the fact that the five percent commission rate contained in Act No. 556, *supra*, is unconstitutional, the probate judges should continue to charge commissions as established in other statutes and which existed prior to the enactment of Act No. 556, *supra*.

If this office may be of any further assistance to you or the Probate Judges Association in this matter, please let us know.

Very truly yours,

WILLIAM J. BAXLEY

Attorney General

November 13, 1975

Honorable Gerald Waldrop

State Senator

Senate Chamber

Montgomery, Alabama 36130

Ad Valorem Taxes — Physicians — Exemptions

Claim for exemption must be made each year by claimant in order to be accorded the exemption provided by Act No. 1000, Regular Session 1973, Legislature pertaining to home. Section 1 of Act No. 1000, Regular Session 1973, does not require certification by two licensed physicians in this State to prove total disability.

Opinion by Assistant Attorney General Payne

Dear Senator:

This will acknowledge your letter of October 17, 1975 with respect to exemption from ad valorem taxation under §1 of Act # 1000, Regular Session Legislature 1973. You quote §1 of the Act after which you pose the following question:

“Does this provision require the disabled claimant to furnish written certifications from **two** qualified physicians **each year** to verify his disability?”

Your question Senator, is answered in the following manner. If the taxpayer desires to offer proof of total disability he **may** do so upon certification of two qualified physicians each year in order to verify the disability. Section 1 of Act 1000 with respect to proof of total disability reads as follows:

“Proof of total disability may be, **but shall not be limited to**, the written certification of such total disability by any two physicians licensed to practice in this state.” (Emphasis Supplied)

The language of the Act as set out above discloses that the Act is merely **suggestive** as to proof of total disability by certificates of any two physicians. The manner and mode of proof is not limited in showing total disability. Thus, the taxpayer may furnish affidavits to the Tax Assessor from neighbors, friends, relatives, former employers and hospital records. Let me emphasize that §1 of the Act does not require that total disability be proven by certification of two qualified physicians licensed to practice in Alabama.

Section 41, Title 51, Code of Alabama 1940, provides in part as follows:

"After administering the foregoing oath, the assessor, his deputy or other officer shall particularly inquire of the taxpayer as to the items of property and subjects of taxation owned by the taxpayer and for which he is liable to be taxed, and property exempt from taxation.***** Provided that all property claimed exempt from taxation under the provisions of this title shall be listed with the tax assessor by the taxpayer and entered on his return showing the items of property sought to be exempted and provided further that no property omitted from said return shall be exempted."

An Opinion of the Attorney General, 1936-38, page 424, provides that homestead exemptions must be claimed. It follows likewise that the exemptions in Act 1000, *supra*, must be claimed. The condition of the totally disabled person might change. In any event, the exemptions must be claimed each year. The Attorney General stated in the above opinion:

"Therefore, it was not the intention of the legislature that the law granting the homestead exemption should be self-executing to the extent that the exemptioner is under no obligation to do or perform an assertive act in pursuit of the gratuity which the legislature has offered."

Consequently, in view of the above, the exemption must be granted each year.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

November 24, 1975

Honorable William B. Duncan
Judge of Probate
Lauderdale County
Florence, Alabama 35630

Counties — Prisons and Prisoners — Medical Care

Counties are responsible for providing prisoners held over in county jails with proper and adequate medical treatment. The State is liable for the cost incurred by the county in providing such medical treatment when the prisoner is being held over in county jails for an unreasonable period following sentence because of the inability on the part of the Board of Corrections to present a written order for his transfer.

Opinion by Assistant Attorney General William M. Bowen, Jr.

Dear Judge Duncan:

The question presented in your letter requesting an opinion from this office is as follows:

“After a person is tried and convicted in Circuit Court and after the Circuit Court Judge sentences him to the state prison, is the county responsible for the state prisoner’s medical and dental bills that are incurred while said state prisoner is being held in the county jail awaiting transfer to a state institution?”

This office has stated in a prior opinion that under Title 45, Section 125, Code of Alabama 1940, Revised 1958, it is the duty of the sheriff or jailer of the county to furnish at the expense of the county the medicine and medical attention to prisoners in the jail who have been convicted and sentenced to the penitentiary pending their removal to the penitentiary if such prisoner is unable to pay for such services. Report of the Attorney General, January-March, 1944, page 43.

However, this statute does not envision any unreasonable delay in the transfer of the prisoner to the appropriate place of incarceration after sentence. Title 45, Section 26, Code of Alabama 1940, Recompiled 1958, provides that:

“When any convict is sentenced to the penitentiary, the judge of the court in which the sentence is had shall order such convict to be confined in the nearest secure jail; and the clerk of the court shall at once notify the director (Board of Corrections) as to the jail where such convict is confined, and forward to him a copy of the judgment entry and sentence in the case and inform him if any special care be necessary to guard such convict; and thereupon the director shall direct where such convict shall be taken for confinement or hard labor.”

This statute has been construed by the courts of this state as requiring that the transfer is to be accomplished as expeditiously as reasonably possible and that no undue delays were to be incurred in its achievement. For authority on this point see *Smith v. State*, (1912), 4 Ala. App. 210, 58 So. 117, where the Alabama Court of Appeals remanded the prisoner to the custody of the Board of Corrections for

confinement in the penitentiary after finding that the prisoner had been held in the custody of the sheriff in the county jail for an unreasonable length of time (21) days after having been sentenced to serve a term in the penitentiary, the clerk of the sentencing court having properly notified the Board of Corrections as provided in the above statute. Indeed, a prisoner in the custody of the county jail for an unreasonably long time after sentence to the penitentiary, is not in the custody of a person authorized by law to detain him, for the penitentiary authorities constitute the proper and lawful custody. **White v. State** (1902), 134 Ala. 197, 32 So. 320.

Upon the basis of unreasonable delay in transferring a prisoner to the state penitentiary following his sentence thereto, the courts of this state have ordered the immediate transfer and removal of the inmate from the county jail to the state penal facility to begin serving his sentence. The Fifth Circuit Court of Appeals in **Gamble v. Alabama**, (1975), 509 F. 2d 95, 98, recently held that the state cannot deny credit against the penitentiary sentence for time spent by a prisoner in the county jail after conviction where the failure of the state to transfer the prisoner to the appropriate place of incarceration accounts for the fact that the prisoner was confined in the county jail rather than the penitentiary.

From the foregoing citation of authority, it is apparent that an expeditious transfer to the penitentiary following conviction and sentence thereto is anticipated and expected under the prevailing statutory and case law of this state. Therefore, when an inmate remains in the county jail for an **unreasonable** period following sentence because of an inability on the part of the Board of Corrections to present a written order for his transfer (pursuant to Title 45, Section 27, Code), it is inequitable that the financial burden of this delay should be borne by the county. For this reason, the former opinion of this office referred to in the opening paragraph of this letter (Report of Attorney General, January-March, 1944, page 43), is hereby overruled to the extent that it conflicts with this present opinion.

While the county is relieved of the expense incurred in providing prisoners held over in a county jail for an unreasonable period following sentence due to the inability on the part of the Board of Corrections to present a written order for a transfer, the county remains responsible for providing prisoners with access to adequate medical and dental treatment. In **Newman v. State**, 349 F. Supp. 278 (1972), Chief Judge Johnson held that prisoners were entitled to proper and adequate medical treatment as guaranteed under the Eighth and Fourteenth Amendments to the United States Constitution. Judge Johnson stated that refusal to provide adequate medical treatment to prisoners constituted cruel and unusual punishment. Counties shall be reimbursed for the cost incurred in providing adequate medical treatment in these circumstances.

After a prisoner is convicted and sentenced to the penitentiary, the county is **not** responsible for that prisoner's medical and dental

bills incurred after the inmate has remained in the county jail for an unreasonable length of time (21 days was cited by the court as being unreasonable in **Smith**, supra), following sentence. The statute (Title 45, Section 26) authorizing confinement of the convict in the county jail pending his removal is limited to "temporary" confinement and for such periods of temporary confinement the county must bear any medical expenses which may be necessary. While the State Board of Corrections must assume responsibility for the payment of those medical expenses incurred where the prisoner has remained in the county jail for an unreasonable time following his sentence to the penitentiary, it remains the duty of the county in which the prisoner is held to provide the prisoner with proper and adequate medical treatment.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

December 2, 1975

Dr. George W. Newburn
Mobile County Board of Health
248 Cox Street
Post Office Box 4533
Mobile, Alabama 36604

Health and Health Departments — Search and Seizure
County health officials can make warrantless inspections to insure compliance with state and local health laws and with the local air pollution control program authorized pursuant to the Alabama Air Pollution Control Act of 1971.

Opinion by Assistant Attorney General Burwell

Dear Dr. Newburn:

This is in response to your letter of October 15, 1975, requesting an opinion from this office as follows:

A written Attorney General's opinion is requested concerning the necessity for and applicable procedures governing the use of search warrants in the enforcement activities of the Mobile County Board of Health. Such opinion is needed in reference to present problems experienced in our enforcement activities, and it is submitted that your treatment of this topic will be of more than merely academic interest to all other administrative and regulatory agencies in the State which are charged with the enforcement of laws and regulations.

We would request that you refer to the following sources, among others, which concern this question:

- (a) Title 22 Section 80, Code of Alabama, 1940—Dealing with resistance to a Health Officer in the performance of his duties.
- (b) Title 22, Section 310(9), Code of Alabama, 1973 Cum. Supp.—Dealing with inspection and right of entry under the Alabama Air Pollution Control Act of 1971 (Such provisions also presumably applying to local air pollution control programs.)
- (c) Title 15, Section 99-118, Code of Alabama, 1940, as amended. Dealing with search warrants and procedures relating thereto.
- (d) The case of **Camara vs. Municipal Court**, 387 U.S. 523, 18 L.ed. 2d 930, 87 S.Ct. 1727 (1967) and subsequent cases following the holding of this decision.

While this question has been of concern to the Board of Health in our enforcement activities, the decision to request your opinion was precipitated by the following incident: Complaints had been received concerning an unauthorized dump and/or an insanitary live stock pen in the County. Health inspectors visited the site and noticed odors from the back of the property, an area some distance from the road and concealed by vegetation. Contact was made with the property owner. The inspectors identified themselves and requested permission to inspect the rear of the property in reference to the alleged health violations. Permission was refused and the occupant stated that he would require a search warrant before any investigation of his property could be made. The case was resolved but not before inspectors initiated actions to procure a search warrant from the local courts. Certain questions were raised by the Court as to whether the issuance of a search warrant was proper in such cases.

Members of the Board's Air Pollution Control Agency have also been advised, informally, that if they ever seek to enter certain industrial property for purposes of enforcement (as opposed to regular inspections) they had best arrive with search warrant in hand.

Title 22, Sec. 80 appears to govern instances where a health officer is met with resistance. It is submitted that this section is unworkable from a practical standpoint in that while a sheriff or constable could enter property by force, it is highly unlikely that the sheriff's department is equipped to clean up an unauthorized dump or repair a malfunctioning septic tank.

Title 22, Sec. 310(9) appears to prohibit resistance during air pollution inspections. It is unclear whether this section refers only to normal administrative inspections or whether it also applies to enforcement actions (a situation where there is

evidence leading an inspector to believe that a health violation punishable under the criminal laws is taking place on the premises).

If we assume that health inspectors could, under the provisions of the preceding two sections, force their way onto private or commercial property during an enforcement action, then would not evidence of health violations gained during the search of the property be subject to exclusion in subsequent Court actions under the provisions of the **Camara** decision and others relating to the necessity of search warrant? A collateral question arises as to criminal charges being filed against a party who refuses to allow a health official to inspect his property (interference with or resistance to a health official) during enforcement activities. If the party has a right under the **Camara** principles to require a search warrant, then can he be prosecuted for exercising his constitutional rights?

The last aspect of our inquiry relates to the Alabama statutes governing search warrants and procedures for obtaining same. It is submitted that the provisions of Title 15, Section 99-118 governing the issuance of search warrants are historically geared to the discovery, seizure and return of **property** and the subsequent use of same as evidence in criminal prosecutions. Would these statutes dealing with search warrants provide an appropriate vehicle in cases where health inspectors seek evidence of unauthorized dumps, samples of paint with lead content exceeding health standards or verification that an electrostatic precipitator has been purposely taken offline in the boiler room of a major industry?

If a search warrant as provided under the Alabama statutes would be an appropriate vehicle, then what are the standards for this issuance of same in cases of enforcement dealing with health laws? Is the "source" of odors or rodent infestation a sufficient enough description of property which is the object of a search? Is the health inspector held to the same "probable cause" requirements as is the narcotics officer in searching a dwelling for drugs? Can a search warrant be issued to a health inspector or must the warrant be issued to a sheriff or a constable?

Your attention and opinion concerning these matters will be greatly appreciated and will provide needed guidance to the Mobile County Board of Health in its enforcement activities.

The authority of the county boards of health is set out in Title 22, §8, Code of Alabama, 1940, as amended. Title 22, §8, in part reads:

It shall be the duty of the county boards of health in their respective counties and subject to the supervision and control of the state board of health: (2) To investigate through county

health officers or quarantine officers, cases or outbreaks of any of the diseases enumerated or referred to in section 47 of this title and to enforce such measures for the prevention, or extermination, of said diseases as are authorized by law. (3) To investigate through county health officers or quarantine officers all nuisances to public health, and through said officers to take proper steps for the abatement of such nuisances. (4) To exercise, through county health officers or quarantine officers, special supervision over the sanitary conditions of schools, hospitals, asylums, jails, almshouses, theatres, opera houses, court houses, churches, public halls, prisons, markets, dairies, milk depots, slaughter pens or houses, railroad depots, railroad cars, dining cars, street railroad cars, lines of railroads and street railroads (including the territory contiguous to said lines), industrial and manufacturing establishments, offices, stores, banks, club houses, hotels, rooming houses, residences, the sources of supply, tanks reservoirs, pumping stations, and avenues of conveyance of drinking water, and other institutions and places of like character; and whenever insanitary conditions are found, to use all legal means to have the same abated.

Implicit in the phrase found in subsection 8(4) "to exercise . . . special supervision over the sanitary conditions of . . ." is the authority of county health officers to enter and inspect the types of structures listed in the subsection. The types of structures listed can be divided into three categories: governmentally operated structures, commercial structures and residential structures.

City and county officials who operate government structures must submit to the statutory authority of county health officials. There is no right of privacy in public buildings except as to offices and lockers where individuals keep personal possessions and papers.

The Fourth Amendment of the United States Constitution and Article 1, Section 5 of the Alabama Constitution place limitations upon public officials as to search and seizure in private homes and businesses. **Camara v. Municipal Court of the City and County of San Francisco**, 387 US 523, 18 LED 2d 930, 87 S Ct 1727, and **See v. City of Seattle**, 387 US 541, 18 LED 2d 943, 87 S Ct 1737, are important United States Supreme Court cases interpreting the Fourth Amendment of the United States Constitution. In substance these 1967 cases hold that inspectors, even though authorized by statute, can not enter a residence or a commercial establishment to make a general inspection of the premises unless consent is given or unless a search warrant has been obtained. **Camara** specifically concerned a residence and **See** concerned a commercial warehouse.

The Supreme Court in the 1972 case of **United States v. Biswell**, 406 US 311, 32 L Ed 2d 87, 92 S. Ct. 1593, narrowed the scope of **See** concerning businesses. The Court ruled that "in the context of a regulatory inspection system of business premises that is carefully

limited in time, place, and scope, the legality of the search depends not on consent but on the authority of a valid statute." **Biswell**, 406 US 311, 315. Another exception to **See** is given in **Air Pollution Variance Board v. Western Alfalfa**, 416 US 861, 40 L Ed 2d 607, 94 S Ct. 2114. **Western Alfalfa** holds that a government inspector may enter upon commercial property where the public is not ordinarily excluded and can observe violations of ordinances or statutes and later testify to these observations in court for prosecution of the owner of the commercial property.

In the **Camara** case the Court was careful to point out that any time consent to an inspection is given, there can be no substantive complaint that the inspector has violated the Fourth Amendment. Also, in **See** the court stated that a license given to any regulated commercial operation can be conditioned on consent by the commercial operator that he will submit to inspections to insure compliance with the law.

These recent United States Supreme Court rulings, read in conjunction with Title 22, § 8 (2)-(4), lead our office to conclude that county health departments should keep the following points in mind in carrying out an inspection program of the commercial structures listed in Title 22, § 8(4).

(1) If the commercial establishments must have a license to operate, any new or renewed licenses should stipulate that the licensee by accepting the license agrees to submit to inspections by county officials for unsanitary conditions or violations of any other state or local regulations or laws.

(2) The inspector can go upon any part of the commercial property that is open to the public and make observations of any violations of state or local regulations or laws without infringing on Fourth Amendment rights.

(3) The inspector, when seeking to inspect a part of a commercial establishment that is not open to the public and that has no licensing arrangements as described in # (1), should first ask if the operator of the establishment will consent to the inspection. If the operator states that he agrees to the inspection, then there is no defense available to the operator that the inspection was an unreasonable search in violation of the Fourth Amendment. If, on the other hand, the operator objects to the inspection, the county health official should then state that he is authorized by state law [Title 22, Section 8 (4), Code of Alabama, 1940, as amended.] to inspect the commercial establishment and a copy of the law should be shown the operator. If the operator continues to refuse to allow an inspection, the county health official should seek either a court order compelling the operator to allow the county health official to carry out his statutory duties (see **Brennan v. Buckeye Industries, Inc.**, 374 F. Supp. 1350) or a search warrant pursuant to Title 22 § 80, Code of Alabama, 1940, as amended.

Title 22 §80 is an appropriate code section by which a health officer would seek a search warrant. By refusing to allow the official to make an inspection authorized by law, the operator is resisting the official in the execution of his duty. Title 22, §80 is worded in a fashion to require the sheriff or his deputy to execute the search warrant. The health inspector can accompany the law enforcement officer. The statute states that the health officer is to direct the law enforcement officer if a nuisance is to be abated.

To digress for a moment, assuming a county health official is allowed entry by consent or after stating that he is authorized to inspect pursuant to statutory provision, in order to stay within the bounds of the **Biswell** decision, the inspection should be at a reasonable time, i.e., during operation hours of the establishment, the inspector should inform the operator that his inspection seeks to determine no more than that sanitary conditions are being maintained, and the inspector should restrict his inspection to those areas of the premise in which sanitary conditions are of general concern to public health safety.

(4) While Title 22, §8(4) includes residences as subject to supervision by county health officials, **Biswell** does little to narrow the ruling of the Supreme Court in **Camara** as it applies to residences. If a person fails to give consent to an official to inspect his private residence, the official must forego the inspection unless he obtains a search warrant. The Supreme Court in **Camara** does present an exception to this general rule. The Court states that "nothing we say today is intended to foreclose prompt inspections, even without a warrant, that the law has traditionally upheld in emergency situations." The Court gives examples such as "seizure of unwholesome food, compulsory smallpox vaccination, health quarantine and summary destruction of tubercular cattle" (**Camara**, 387 US at 539).

Title 22, §8 (3), Code of Alabama, 1940, as amended, particularly provides that county health officers are to investigate all nuisances to public health and take proper steps for abatement of such nuisances. Assuming a county health official has probable cause to believe that a public nuisance of emergency proportions is in existence on private property or within a private residence and the owner refuses to consent to an inspection to determine the seriousness of the nuisance, the official can demand entry without a warrant. **However, a health official has no legal right to forcefully enter unless he has a search warrant.** If the resident refuses to allow the health official to inspect for the suspected public nuisance after a demand for entry has been made (on the basis of an emergency situation), the official again can rely on Title 22, Section 80, to obtain a search warrant. Refusal to allow an inspection is paramount to forcible resistance to a health official in execution of his duty. [It should be noted also that the Supreme Court in **Camara** states that a lower standard of probable cause to obtain a search warrant is sufficient for administrative searches than is necessary for criminal related searches. (**Camara**, 387 US at 538)]

(5) County health officials authorized to carry out the inspections for the local Air Pollution Control Program have a model statutory inspection provision [Title 22, §310 (9), Code of Alabama, 1940, as amended] by which to operate. Not only are the officials specifically authorized to enter for inspection and sampling purposes but refusal by persons operating the regulated business is a violation of the Air Pollution Control Act and subjects the violator to penalties imposed in Title 22, §310 (17), Code of Alabama, 1940, as amended. If refused entry, health officials can have the business operators prosecuted for violation of the law and/or obtain a court order directing the business operators to submit to inspection. (See again **Brennan v. Buckeye Industries, Inc.**, 374 F. Supp. 1350.)

Very truly yours,

WILLIAM J. BAJLEY
Attorney General

December 4, 1975

Honorable Monroe Smith
State Representative
Route 1, Box 984
Lanett, Alabama 36863

Courts — Judges.

Candidates for election to district court judgeships must be licensed to practice law in this State before they may qualify for nomination or election.

Dear Rep. Smith:

In your recent letter you requested an opinion on the following question and set of facts:

"Would a candidate be qualified to run for one of the new District Court judgeships if:

- "(1) he graduates from Law School in May
- "(2) he takes the Bar Exam in July
- "(3) he is actually elected in November after winning the Democratic primaries of May and June
- "(4) he will not be 'licensed to practice' until probably September [this is a requirement of the Judicial Article]."

The answer to your question turns upon the interpretation given Section 4-113(e) of Act No. 1205 of the 1975 Regular Session of the Alabama Legislature. Act No. 1205 is the new Judicial Article implementation legislation and it creates district judgeships and provides qualifications for candidates for district court judgeships. Section 4-113(e) provides:

"QUALIFICATIONS. Candidates seeking to be elected as a district court judge shall be licensed to practice law in this state and shall file all necessary documents of qualification with the Secretary of State as provided by law."

This section clearly provides a qualification for "candidates" for office and not a qualification for holding office. It thus seems clear that a person could not be a candidate for the district judgeship in the November General Election unless he is licensed to practice law in this State. Further, a candidate in the Primary Election for nomination to a district court judgeship is also a candidate for election to a district court judgeship. It would seem illogical to permit a person who is not qualified to be a candidate for election in the General Election to be nominated in the Primary Election and, consequently, it is my opinion that a candidate for nomination for a district court judgeship must also be licensed to practice law in this State.

Sincerely,

WILLIAM J. BAXLEY
Attorney General

December 8, 1975

Honorable Wayne Teague
Superintendent, Department of Education
State Office Building
Montgomery, Alabama 36130

Dept. of Education — Boards of Education

A local board of education may provide assistance to a handicapped child who finds it necessary to attend a special private facility outside the district in which he resides.

A local board of education may expend minimum program funds to assist a handicapped or otherwise "exceptional child" who must attend a special facility operated with State funds.

Opinion by Assistant Attorney General Hamlett.

Dear Dr. Teague:

In your letter dated November 18, 1975, you have raised in substance, the following issues for resolution:

"In administering the programs for exceptional children in the State of Alabama, it is necessary from time to time to allow handicapped children to attend special private educational facilities because of the impracticality of developing programs for limited numbers. Section 534(22) of Title 22 of the CODE OF ALABAMA authorizes local boards of education to provide

financial assistance to these children under the rules and regulations established by the local boards of education. We in the State Department of Education have interpreted this section to limit financial assistance to those children attending private institutions within the local school district.

"Also, we have had requests for the provision of financial assistance to handicapped children for the purpose of allowing them to attend a speech and hearing facility operated by the University of Montevallo. Our interpretation of Section 534(22) and Section 61(20) of Title 52 of the CODE OF ALABAMA would limit the provision of financial assistance to the children attending private facilities.

"I request your opinion regarding the following questions:

- "1. Can a local board of education provide assistance to a handicapped child who finds it necessary to attend a special private facility outside the district in which he resides?
- "2. Is it legal for a board of education to expend minimum program funds to assist a handicapped child who wishes to attend a special facility operated with state funds?

My answer to both of your questions is in the affirmative.

Chapters 28 B and 28 C of Title 52, provide for the education of exceptional children. Chapter 28 C embodies the Exceptional Child Education Act (Act No. 106, General Acts 1971, page 381, approved July 22, 1971; hereinafter referred to as "the Act") and establishes the structure of special services for exceptional children.

I find no authority for applying Title 52, Section 61(20), Code of Alabama 1940, Recomplied 1958, to exceptional children—either directly or in conjunction with the aforementioned provisions. Moreover, neither Section 61(20) nor Section 534(22) are of current applicability to exceptional children inasmuch as the Act contains a repealer stating that "All laws or parts of laws in conflict with this Act are repealed" (Act No. 106, General Acts 1971, page 382, approved July 22, 1971). Thus the Exceptional Child Education Act is the only statute we need look to to define special programs for exceptional children in Alabama.

An analysis of the statutory organization of the provisions to which you refer and of the Act clarifies my position. Section 61(20) was enacted in a continuing legislative effort to provide private school education for those students who were, for one reason or another, foreclosed from attending existing public schools or were unable to acquire certain categories of instruction in the public schools available to them. On the other hand, Sections 534(22) — 534(36) (including the Act) warrant specific application to non-public school education for exceptional children.

That the two provisions to which you refer are inapplicable or no longer applicable is significant to your inquiries, since Section

61(20) is the statute which makes the use of the Montevallo facility questionable by expressly limiting school board expenditures to a "private non-denominational institution, within or without the district." In furtherance of the effect of the repealer in the Act, note the following inconsistencies: (1) Under Sections 61(2) and 534(22), local boards may establish their own rules and regulations regarding the qualifications of students under a private school assistance program, which regulations "shall be final," whereas exceptional children under the Act must be "certified under regulations of the state board of education;" (2) Section 61(20) applies to "residents" of districts in general, Section 534(22) to children "between the ages of six and sixteen," while the provisions of the Act are expressly limited to "persons between the ages of six and twenty-one years;" (3) The territorial restriction in the Act (institutions within the state of Alabama) is narrower than that in Section 61(20) (institutions within or without the district) and broader than the implied restriction in Section 534(22) (within the school district;) and (4) The limitation on per pupil appropriation in Sections 61(20) and 534(22) is the probable cost for instruction of public school children within the district. A dissimilar, and perhaps more liberal, limitation on appropriation in the Act is "the average per pupil appropriation for all exceptional children in the school district."

Finally, and most importantly for your purposes, the Act provides for payments to "appropriate semi-public or private schools or institutions which may be able to provide appropriate services." While the term "semi-public" is not defined in the Act, the examples of the Children's Center of Montgomery and the Opportunity Center School in Birmingham are offered. Personnel at the Children's Center of Montgomery informed me that the programs for school children are structured under the Act. Accordingly, the Center, though basically a privately funded institution, is eligible for and receives from the board of education allowances for teacher units, transportation and all other aid for exceptional children. The University of Montevallo is, of course, a public institution of higher learning. However, it is not a part of the "school system," nor is it under the authority or control of a local board of education. Moreover, unlike "public schools" in the generic sense, the University as well as all state Universities, is selective in its admission and levies substantial tuition and other costs for the privilege of attendance and enjoyment of its facilities. The speech and hearing facility is even less public in nature inasmuch as it is a special program available to but a few of the students. On a more pragmatic note, attendance at the facility by exceptional children in need of its services could only enhance the specialty training it provides for University students.

The specific provisions of the Exceptional Child Education Act, particularly the "semi-public" designation, prevail over prior inconsistent provisions in the Code, including Sections 61(20) and 534(22). Accordingly, under the Act (Title 52, Sections 534(24) — 534(36), Code of Alabama 1940, Recompiled 1958), minimum program funds to assist

exceptional children should be expendable at any special facility within the state of Alabama, including those funded primarily by the state but otherwise unavailable to such children, provided the appropriation does not exceed the limitations set forth in the Act and referred to above.

I trust that I have answered your questions sufficiently. Please do not hesitate to call upon this office if we can be of further assistance in these matters.

Sincerely,

WILLIAM J. BAXLEY
Attorney General

December 15, 1975

Honorable William J. Benton
District Attorney
Office of District Attorney
26th Judicial Circuit
Phenix City, Alabama

Circuit Courts — Non-support.

Divorce proceedings in circuit court do not preclude inferior court from proceedings under Desertion and Nonsupport Statute.

Opinion by Assistant Attorney General Carol F. Miller

Dear Mr. Benton:

I have received your request for an official opinion which is as follows:

"This office has had many requests to prosecute absent fathers for abandonment of family (nonsupport of minor children) where the Defendant lives in Alabama, and the minor children are residents of Russell County. Where the parties are merely separated, but not divorced, our Court of Common Pleas issues warrants and prosecution is had without difficulty. However, where the Defendant has an Alabama divorce decree, under which he is ordered to pay child support, we are informed that the law is that no prosecution may be had under the criminal statute because of the Circuit Court's pre-emptive civil jurisdiction over the parties and the matters complained of.

We have conferred with the Judge of the Court of Common Pleas in Russell County, and he concurs in our request for a formal opinion from your office as to the above interpretation of the law."

My answer to your inquiry is that prosecution may be had under the Desertion and Nonsupport Statute, Title 34, §§89 through 104, notwithstanding the rendition of a divorce decree in the Circuit Court.

The Alabama Supreme Court in **State vs. Worthington**, 227 Ala. 204, 149 So. 709 (1933) held that a divorce suit in the Chancery Court was not a bar to a proceeding in the Juvenile Court against a father who willfully and without lawful excuse failed to support his children, the children being destitute. The doctrine that when two courts have concurrent jurisdiction to enforce the same rights between the same parties and one of them has attached the other is without right to proceed to the same end, applied only in respect to the jurisdiction of the court to enforce the same right. However, the proceeding under the desertion and nonsupport statute is, as stated by the Court in **Worthington**,

"... Initiated on behalf of the public on account of a right in it to have a duty to children enforced to a limited extent; that is, that they may be relieved of destitution. It is not the right of the children that it enforces, but the incidental right of the public consequent upon the destitution of the children. "But the chancery court is not limited to provision for the prevention of destitution, but its jurisdiction extends to enforcing the full measure of the duty which he as a parent owes to his children to provide for their maintenance, support, and education. Their jurisdiction is not therefore concurrent . . ."

The Alabama Supreme Court again considered this question in **Guy vs. Robison**, 252 Ala. 99, 39 So. 2d 392 (1949), where it stated:

"It is contended that since the jurisdiction of the circuit court in equity had attached, the probate court was without jurisdiction to try the case. It is certainly correct that when two courts have concurrent jurisdiction, the first court which acquires jurisdiction of the same cause of action between the same parties shall proceed with it to final disposition and it cannot be deprived of the power so to proceed by a subsequent suit in another court of concurrent jurisdiction. *Glazner v. Jenkins*, 237 Ala. 262, 186 So. 475; *Whitfield v. Saulsberry*, 247 Ala. 690, 26 So. 2d 93. This principle is not, however, applicable here. The same rights are not involved in the two suits, because in the equity suit it is the power of the court to declare and enforce the duty of the father to his child, while under §90, Title 34, Code of 1940, it is the power of the state under its police power to punish a parent who willfully and without lawful excuse allows his child to be in destitution. *State v. Worthington*, 227 Ala. 204, 149 So. 709; *Jones v. Blue*, Judge, 21 Ala. App. 48, 105 So. 698, certiorari denied, *Ex parte Jones*, 213 Ala. 549, 105 So. 700."

These decisions do not appear to have been modified.

Therefore, it is my opinion that a proceeding under Title 34, Sections 89-104, Code of Alabama 1940, Recompiled 1958, as described by you, can be brought and prosecuted to a conclusion in an inferior

court in instances in which a divorce decree has been handed down in the Circuit Court.

Yours very truly,

WILLIAM J. BAXLEY
Attorney General

December 16, 1975

Mr. Charles W. Woodham
Attorney and Secretary
Henry County Hospital Board
Halstead, Whiddon and Woodham
P. O. Box 636
Abbeville, Alabama 36310

Hospitals — Expenses — Physicians

Hospital Board can pay travel expenses of doctors
who are being recruited to staff hospital.

Opinion by Ass't. Atty. Gen. Kendrick

Dear Mr. Woodham:

Our office received your letter requesting an opinion from the Attorney General concerning payment by hospital of the travel expenses of the doctors it recruits to staff the hospital.

You present the following question:

Can a hospital board or hospital legally pay for travel expenses, accommodations and meals incurred by doctors who are being actively recruited to staff the hospital?

It is my opinion that a hospital may pay for such expenses.

Title 22, Section 204 (24), Code of Alabama 1940, Recompiled 1958, which states the powers of a hospital corporation reads in part:

The corporation (hospital) shall have the following powers, together with all powers incidental thereto or necessary to discharge thereof in corporate form: . . . to acquire, construct and equip, enlarge, improve and maintain and operate a hospital and to do all things necessary to that end. (Parenthesis added)

In order to maintain and operate a hospital, its board must maintain an adequate and competent staff of doctors to work in it. In order to obtain these doctors the board must recruit them, and paying for their travel and accommodation expenses is a part of this recruitment. This is a factor necessary to maintain and operate a hospital. Therefore, this comes within the necessary powers of a hospital board.

The opinion issued by this office to David Hyde of Evergreen, Alabama, on March 1, 1974, is hereby overruled.

Sincerely,

WILLIAM J. BAXLEY
Attorney General

December 17, 1975

Honorable David Vann
Mayor

City of Birmingham
Birmingham, Alabama 35203

Voters — Elections

City may and should provide paper ballot as an alternative method of voting for physically handicapped persons who are unable to use voting machines.

Opinion by Assistant Attorney General Stephens.

Dear Mayor Vann:

In your recent letter you related the following facts and made the following request:

"The City of Birmingham has been requested to provide paper ballots as an alternative method of voting for the physically handicapped unable to use voting machines. This alternative procedure would be available at the request of the handicapped and have the advantage of allowing the individual to cast his own vote.

"If a physical handicapped citizen desired not to cast the paper ballot, he could choose to have someone cast his vote in the regular machines as currently provided by law.

"Please advise in an official opinion if this procedure is legal. If so, would the city be restricted from using this method in non-municipal election?"

It is my opinion that the City of Birmingham may and should provide paper ballots as an alternative method of voting for physically handicapped persons who are unable to use voting machines. This is so whether the election be a municipal election or a non-municipal election.

The right to vote is perhaps the most important of our American rights. It is the right upon which all of our other rights depend, the right which is the heart of a democratic society. The city has the duty to provide means by which its citizens may participate in the democratic process and exercise their rights to vote. The right to vote

cannot be denied to an otherwise qualified citizen merely because he is physically handicapped and the failure to provide a means by which a physically handicapped person may vote is equivalent to denying that person his right to vote.

Sincerely,

WILLIAM J. BAXLEY
Attorney General

December 18, 1975

Honorable Agnes Baggett
Secretary of State
Capitol

Montgomery, Alabama 36130

Secretary of State — Legislation

Act No. 1147 of the 1975 Regular Session of the Alabama Legislature does not repeal Act No. 421 of the 1949 Regular Session of the Alabama Legislature but does repeal Act No. 424 of the 1949 Regular Session of the Alabama Legislature.

Opinion by Assistant Attorney General Stephens.

Dear Mrs. Baggett:

I have received your request for an opinion which request read as follows:

"We call your attention to Act No. 1147 of the 1975 Regular Session of the Alabama Legislature, copy of which is attached. In the title of the Act it is stated that Act No. 424 is being repealed; however, in Section 18 of the Act it is stated that Act No. 421 is repealed. Other citations pertaining to the act being repealed, namely, Act No. 424, are correct in the title and in Section 18.

"We will appreciate an opinion from your office regarding the validity of this Act."

The law is well settled in this state that the title of a legislative act must, at least in general terms, reflect the subject of the act and that a legislative act may contain but one subject. These limitations upon legislative acts are derived from Section 45 of the Constitution of the State of Alabama. Section 45 provides:

"The style of the laws of this state shall be: 'Be it enacted by the legislature of Alabama,' which need not be repeated, but the act shall be divided into sections for convenience, according to substance, and the sections designated merely by figures. **Each law shall contain but one subject, which shall be clearly expressed in its title**, except general appropriation bills,

general revenue bills, and bills adopting a code, digest, or revision of statutes; and no law shall be revived, amended, or the provisions thereof extended or conferred by reference to its title only; but so much thereof as is revived, amended, extended, or conferred, shall be reenacted and published at length."

Because the title of Act No. 1147 does not clearly state that the act will repeal Act No. 421 of the 1949 Regular Session and because Act No. 421 relates to an entirely separate and distinct subject from that generally treated in Act No. 1147, that portion of Section 18 of Act No. 1147 which states that Act No. 421 and all acts amendatory or supplemental thereto are repealed is invalid. The remainder of Act No. 1147, however, is valid and enforceable.

The reference to Act No. 421 is obviously a typographical error and the proper reference should have been to Act No. 424. This error, however, should have no practical effect upon the interpretation or application of this law. As noted above, that provision which purports to repeal Act No. 421 is invalid. Also, since there still exists in Section 18 of Act No. 1147 the provision that all laws or parts of laws in conflict with Act No. 1147 are repealed, Act No. 424, which is in conflict with Act No. 1147, is repealed.

In summary, Act No. 1147 is valid and enforceable with the exception that the provision which purports to repeal Act No. 421 of the 1949 Regular Session of the Alabama Legislature is invalid.

Sincerely,

WILLIAM J. BAXLEY
Attorney General

INFORMAL OPINIONS

During the period October 1, 1975 through December 31, 1975 the Attorney General rendered the following informal opinions.

Subject

Addressee

Date

File

— A —

ABC BOARD

ABC Board—Temporary Licenses

Charles H. Younger

Oct. 7

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AD VALOREM

Reappraisal Warrants—Pro-Rata Costs Withheld

John M. Fleming, Jr.

Nov. 14

42

Reappraisal Program—Additional Office Space—Funds

Wayne E. Johnston

Nov. 24

61

Ad Valorem Exemption—Must Be Claimed

Ina H. Becker

Oct. 10

79

College Fraternity—Ad Valorem Exemption

Edward Christopher

Oct. 20

85

Reappraisal Contract—Surety—

Non Residents

Charles A. Boswell

Dec. 22

Revenue Dept.

Ad Valorem Exemption—

Manufactured Goods

Willie J. McKnight

Dec. 22

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ADVERTISEMENTIS

Educational Television Comm.—

May Advertise Programs

Skip Hinton

Oct. 8

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Arts & Humanities Council—

Magazine Ads

Dennis Bailey

Nov. 20

Arts & Humanities Council

Subject	Addressee	Date	File
AGE OF MAJORITY 19-Year-Olds—Accounts With Broker Dealers	Thomas L. Krebs	Oct. 29	Securities Comm.
AGING, STATE COMMISSION ON Central Alabama Planning Commission—"Aging Consortium"	William F. Joseph, Jr.	Oct. 9	9
AIRPORTS Montgomery Airport Authority— Immunity From Lawsuit	J. Donald Reynolds	Dec. 31	131
ALCOHOLIC BEVERAGES City of Huntsville—Regulation of Alcoholic Beverages	Richard Gregg	Dec. 4	50
AMBULANCE SERVICE Ambulance Franchise—County Has No Authority Ordinance—Making Cited Debt A Misdemeanor—Unconstitutional Civil Defense Funds—Ambulances	Tolbert O. Owens Willard O. Jackson Joe Hedrick	Oct. 1 Oct. 2 Oct. 11	1 2 Civil Defense
ANNEXATION Reduction of City Limits— Property Liabilities	Nat Sonnier	Oct. 23	150
ANNISTON, CITY OF Museum Board—City May Create	Carl Cheatham	Oct. 9	66

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ARTS & HUMANITIES, STATE COUNCIL ON Arts & Humanities Council— Magazine Ads	Dennis Bailey	Nov. 20	Arts & Humanities Council
AUDITOR'S OFFICE Out-Of-State Travel—Actual Expenses	Bettye Frink	Oct. 7	Auditor's Office
— B —			
BANKING DEPARTMENT Consumer Finance Act—Fees To General Fund Childersburg Bank—Branch At Vincent Electric Cooperatives— Bank Deposits— Act No. 548, 1965 Acts	M. Douglas Mims M. Douglas Mims M. Douglas Mims	Nov. 3 Nov. 18 Dec. 30	Banking Dept. Banking Dept. Banking Dept.
BANKS & BANKING Electric Cooperatives—Bank Deposits— Act No. 548, 1965 Acts	M. Douglas Mims	Dec. 30	Banking Dept.
BOARD OF CORRECTIONS Used Equipment Purchase—Competitive Bid Law State Inmates—To County Jails	J. C. Locke, Jr. Hobson Manasco, Jr.	Dec. 11 Dec. 19	Bd. of Correction 126
BOARDS OF EDUCATION Boards of Education—Executive Session	James T. Willoughby	Oct. 22	8

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Teacher's Contract—Subject To Board of Education	Uralee A. Haynes	Oct. 23	41
School Fees—Unconstitutional	J. Revis Hall	Dec. 29	58
Liability Insurance—Boards of Education	A. R. McVay	Dec. 5	91
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Ad Valorem—Assessment Error—			
Binding At End of Fiscal Year	Sara R. McMullen	Nov. 24	69
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Lauderdale Co.—Board of Registrars—	William B. Duncan	Nov. 18	34
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Recorder's Court	Forrest Dobbins	Oct. 3	72
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Act 951, 1975 Acts—			
Retainage—Construction Contracts	Hugh Adams	Nov. 17	Building Comm.
— C —			
CALHOUN COUNTY			
Calhoun Co.—Pistol Permit Funds—			
Law Library	Roscoe Simmons	Nov. 20	33
Calhoun County—Pistol Permit Fund—			
Clerk's Salary	Roy C. Sneed, Jr.	Nov. 20	37

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City Contract—Chamber of Commerce	Robert L. McCullough	Oct. 20	7
CIRCUIT COURT CLERKS & REGISTERS			
Macon Co.—Deputy Circuit Clerks—Salaries	Fred D. Gray	Nov. 20	27
Circuit Clerk—When Fees Attach	J. Hardy Hendon	Dec. 23	124
CIVIL DEFENSE DEPARTMENT			
Civil Defense Funds—Ambulances	Joe Hedrick	Oct. 11	Civil Defense
COLBERT COUNTY			
Colbert County—Voter Reidentification	Tom C. Coburn	Nov. 20	63
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City of Huntsville— Community Development Program	Joe W. Davis	Dec. 3	36
Community Development Funds— City of Geneva	Charles R. Paul	Nov. 24	44
City of Piedmont—Community			

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Community Development Program— City of Florence	Robert Burdine, Jr.	Oct. 9	46
City of Uniontown— Community Development Program	Andrew M. Hayden	Dec. 15	51
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Madison County Jail—Repair Competitive Bids—Sealed Only	Dave Headrick	Oct. 30	13
Musical Organ Repair—Exempt Competitive Bid	Charles C. Rowe	Oct. 8	20
Schoolroom Construction Contract— Change Order—City of Dothan	Kermit A. Johnson	Nov. 19	25
Little Bear Creek Reservoir— Dredging Emergency	A. C. Allen, Jr.	Nov. 25	30
Lease Purchase Agreement— Solid Waste Disposal Equipment	Rankin Fite	Nov. 19	31
Used Equipment Purchase— Competitive Bid Law	R. L. Harbison	Dec. 15	49
Equipment Lease—\$2000 Per Month—Bids	J. C. Locke, Jr.	Dec. 11	Bd. of Correction
	Tolbert O. Owens	Dec. 19	1
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Per Diem Expense Allowance— Act 131, 4th Special Session, 1975	Fred Zeigler	Nov. 25	Comptroller's Office

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Conservation Dept.—Law Enforcement Officers—Act 206	Claude D. Kelley	Nov. 25	Conservation Dept.
State Park Manager—Act 763, 1973 Acts Quit Claim Deed—Filing Tax	Pete Turnham Claude D. Kelley	Dec. 15 Dec. 1	52 Conservation Dept.
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Game and Fish Laws—Water Safety Law—Fines & Fees	William A. Kynard	Dec. 4	97

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CONSTITUTIONALITY Ordinance—Making Cited Debt A Misdemeanor—Unconstitutional	Willard O. Jackson	Oct. 2	2
CONTRACTS Schoolroom Construction Contract— Change Order—City of Dothan	A. C. Allen, Jr.	Nov. 25	30
COOPERATIVES Electric Cooperatives—Bank Deposits— Act No. 548, 1965 Acts	M. Douglas Mims	Dec. 30	Banking Dept.
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Game and Fish Laws—Water Safety Law—Fines & Fees	William A. Kynard	Dec. 4	97
Marriage Fee—Mobile County	John L. Moore	Dec. 31	99
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County Funds—Advertising—			
Industrial Development Boards	Bruce Gargis	Oct. 16	19
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Sheriff's Auxiliary/Reserve Units	Nathan Mathis	Nov. 19	26
County Commissions—Child Support			
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County Funds—Public Parks	John M. McSwean	Nov. 7	121
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Month—Bids	Tolbert O. Owens	Dec. 19	1
County Funds—City Library	Patrick H. Tate	Oct. 21	162

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County Judicial Commission—			
Campaign for Judgeship	Fred H. McCrory	Oct. 2	22
County Judicial Commission Members—			
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Henry County Inferior Court—			
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Schoolroom Construction Contract—			
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Licensing Board for General			
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Expense Allowance—State			
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EMPLOYEES			
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Salary Increase—State Employees	James R. Solomon, Jr.	Dec. 2	Finance Dept.
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State Employees—Per Diem—Overnight Lodging	C. J. Rehling	Oct. 8	Toxicology Dept.
Per Diem Expense Allowance— Act 131, 4th Spec. Session 1975	Fred Zeigler	Nov. 25	Comptroller's Office
Lauderdale County—Board of Registrars—\$25 Compensation	William B. Duncan	Nov. 18	34
Travel Expenses—All Entitlements Paid	Tom J. Ventress	Oct. 7	Industrial Relations
Circuit Judge—Travel Expenses— County Commission	James Record	Dec. 9	43
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Expense Reimbursement— Legislative Council	Louis G. Greene	Dec. 19	Legislative Council
Marshall County—Circuit Clerk— Expense Allowance	Hinton Mitchem	Oct. 8	140
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Salary Increase—State Employees	James R. Solomon, Jr.	Dec. 2	Finance Dept.
FORESTRY COMMISSION			
State Forester—Drought Emergency	C. W. Moody	Oct. 14	Forestry Comm.
FRANCHISES			
Ambulance Franchise—County Has No Authority	Tolbert O. Owens	Oct. 1	1
FUNDS			
State Supt. of Education— Distributes Educational Funds	Wayne Teague	Oct. 10	Educ. Dept.
No Legislative Appropriation—Governor May Continue Functions Of Government	George C. Wallace	Oct. 10	Governor's Office
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Calhoun County—Pistol Permit Funds— Law Library	Roscoe Simmons	Nov. 20	33
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Gadsden Policemen's/Firemen's Funds—Board Vacancy	Steve Means	Dec. 23	158
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No Legislative Appropriation— Governor May Continue Functions Of Government	George C. Wallace	Oct. 10	Governor Office
County Solicitor/Assistant D. A.— Supernumerary District Attorney	George C. Wallace	Oct. 8	Governor Office

Subject	Addressee	Date	File
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HOSPITALS			
County Hospital—Offices For Doctors	David T. Hyde, Jr.	Oct. 2	3
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City of Huntsville— Community Development Program	Joe W. Davis	Dec. 3	36
City of Huntsville— Regulation of Alcoholic Beverages	Richard Gregg	Dec. 4	50
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INDUSTRIAL DEVELOPMENT BOARDS			
County Funds—Advertising— Industrial Development Boards	Bruce Gargis	Oct. 16	19
INDUSTRIAL RELATIONS, DEPT. OF			
Travel Expenses—All Entitlements Paid	Tom J. Ventress	Oct. 7	Industrial Relations
Dept. of Industrial Relations— Ala. Surface Mining Act of 1975	Tom J. Ventress	Dec. 4	Industrial Relations
Alabama Wage Commission— No Proxy Voting	Tom J. Ventress	Dec. 12	Industrial Relations

Subject	Addressee	Date	File
INSPECTIONS			
AWIC Employees—Industrial Inspection Authority	James W. Warr	Oct. 28	WIC
INSURANCE			
Hospital/Medical Insurance—Teachers Mobile County Racing Comm.— Hospital Insurance	Charles H. Payne	Oct. 15	Insurance Dept.
Retired Circuit Judge— State Employee Insurance	Maury Friedlander	Nov. 26	32
City Liability Insurance	Bruce Gargis	Nov. 26	19
Liability Insurance—Boards Of Education	Frank Ellis	Oct. 16	84
	A. R. McVay	Dec. 5	91
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JUDGES			
Circuit Judge Compensation— 15th Judicial Circuit	W. Mark Anderson, III	Oct. 14	12
County Judicial Commission— Campaign for Judgeship	Fred H. McCrory	Oct. 2	22
Retired Judges Pay—Active Service	David G. Bronner	Oct. 10	Retirement Systems
Circuit Judge—Travel Expenses—County Commission	James Record	Dec. 9	43
Judicial Retirement Systems— Contributions from Oct. 1, 1945	David G. Bronner	Dec. 4	Retirement Systems
Retired Circuit Judge— State Employee Insurance	Bruce Gargis	Nov. 26	19

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JUDICIAL ARTICLE Judicial Article—Juvenile Proceedings—Effective Date	George M. Phyfer	Dec. 16	Youth Services Dept.
JUVENILES Judicial Article—Juvenile Proceedings—Effective Date	George M. Phyfer	Dec. 16	Youth Services Dept.
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LAUDERDALE COUNTY Lauderdale Co.—Board of Registrars—\$25 Compensation Lauderdale County—Board Of Plumbers	William B. Duncan James Putman	Nov. 18 Dec. 3	34 58
LAW ENFORCEMENT Conservation Dept.—Law Enforcement Officers—Act 206	Claude D. Kelley	Nov. 25	Conservation Dept.
Public Safety—Communications Officers—Act 206	E. C. Dothard	Nov. 10	Public Safety Dept.
State Park Manager—Act 763, 1973 Acts Security Guards—Hospitals	Pete Turnham Dean H. Byrd, Sr.	Dec. 15 Dec. 19	52 163
LEASES Rental Tax—Act No. 96, 1971			

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Acts—Not A Consumer Tax Equipment Lease—\$2000 Per Month—Bids	R. F. Dobbins	Nov. 4	72
	Tolbert O. Owens	Dec. 19	1
LEGISLATION			
Per Diem Expense Allowance— Act 131, 4th Spec. Session, 1975	Fred Zeigler	Nov. 25	Comptroller's Office
Tuscaloosa County—Deputy Sheriff Compensation Legislative Resolution— Is Not A Law	Martin Ray	Nov. 7	39
Marshall County—Circuit Clerk—Expense Allowance	A. B. Hankins	Nov. 26	80
	Hinton Mitchem	Oct. 8	140
LEGISLATIVE COUNCIL			
Expense Reimbursement Legislative Council	Louis G. Greene	Dec. 19	Legislative Council
LEGISLATURE			
No Legislative Appropriation—Governor May Continue Functions Of Government	George C. Wallace	Oct. 10	Governor Office
LIABILITY			
Liability Settlement—County Authority City Liability Insurance Liability Insurance— Boards of Education	James C. Sawyer Frank Ellis A. R. McVay	Oct. 14 Oct. 16 Dec. 5	82 84 91

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Occupational Information System— Liability of Directors	David E. Sawyer	Dec. 31	Occupational Information System
Montgomery Airport Authority— Immunity From Lawsuit	J. Donald Reynolds	Dec. 31	131
LIBRARIES			
Calhoun County—Pistol Permit Funds—Law Library	Roscoe Simmons	Nov. 20	33
State Employee—County Library	Beatrice McGough	Nov. 4	76
County Funds—City Library	Patrick H. Tate	Oct. 21	162
LICENSES & PERMITS			
Lauderdale County—Board of Plumbers Occupational License Fee	James Putman	Dec. 3	58
Records—Five Years Fee Schedule—License	L. B. Davidson	Oct. 20	64
Commissioner—Mobile County Frozen Salt Water Fish— No Wholesaler's License	Thornton Price-Williams	Dec. 30	95
	Claude D. Kelley	Dec. 3	Conservation Dept.
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MACON COUNTY			
Macon County—Deputy Circuit Clerks—Salaries	Fred D. Gray	Nov. 20	27

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MADISON COUNTY Madison County Personnel Board—Sets Pay Scales	M. Blaine Osburn	Oct. 14	17
MARSHALL COUNTY Marshall County—Circuit Clerk— Expense Allowance	Hinton Mitchem	Oct. 8	140
MEDICAID Medicaid Division—Issuance Of October Cards	Ira L. Myers	Oct. 3	Health Dept.
MEDICAL EXAMINERS, BOARD OF Board of Medical Examiners— State Agency	Robert Parker	Dec. 16	Medical Exami- ners Bd. of
MENTAL HEALTH Mental Health Centers—Service Contract—Clinical Psychologist	Abe G. Watson	Oct. 7	57
MERIT SYSTEM Madison County Personnel Board—Sets Pay Scales Per Diem Expenses—Contract Employees	M. Blaine Osburn Philip E. LaMoreaux	Oct. 14 Dec. 3	17 Geological Survey
MINES & MINING Dept. of Industrial Relations— Ala. Surface Mining Act of 1975	Tom J. Ventress	Dec. 4	Industrial Relations

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Reduction of City Limits— Property Liabilities	Nat. Sonnier	Oct. 23	150
MOBILE COUNTY			
Fee Schedule—License Commissioner—Mobile County Marriage Fee—Mobile County	Thornton Price-Williams	Dec. 30	95
	John L. Moore	Dec. 31	99
MOBILE COUNTY RACING COMMISSION			
Mobile County Racing Comm.— Hospital Insurance	Maury Friedlander	Nov. 26	32
MONTGOMERY COUNTY			
Circuit Judge Compensation— 15th Judicial Circuit	W. Mark Anderson, III	Oct. 14	12
MOTOR VEHICLES			
Vehicle Weight Law—1975 Act	E. C. Dothard	Oct. 2	Public Safety Dept.
Traffic Offense Records—Release	E. C. Dothard	Dec. 23	Public Safety Dept.
Drinking In Parked Car— City Ordinance	Alexy E. Saliba	Dec. 15	100
MUNICIPALITIES			
Ordinance—Making Cited Debt A Misdemeanor—Unconstitutional City Contract—Chamber Of Commerce Recorders Court—Appeal Of Cases Community Development Funds—	Willard O. Jackson Robert L. McCullough R. A. Robertson	Oct. 2 Oct. 20 Oct. 6	2 7 16

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City of Piedmont—Community Development Program	Charles S. Kerr	Oct. 2	45
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City Manager—No Moving Expenses	Les Bury	Dec. 9	47
City of Uniontown—Community Development Program	Andrew M. Hayden	Dec. 15	51
City Council Vacancy—Highland Lake—Council Fills	Thomas L. Rountree	Nov. 17	60
Occupational License Fee	L. B. Davidson	Oct. 20	64
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Museum Board—City May Create Land Condemnation by City—Recreation	Lewis F. Duckworth	Oct. 9	75
City Funds—Deposit in Bank—Councilman Board Members	Ronnie B. Hayes	Nov. 18	83
City Liability Insurance	Frank Ellis	Oct. 16	84
Drinking In Parked Car—City Ordinance	Alexy E. Saliba	Dec. 15	100
Reduction of City Limits—Property Liabilities	Nat Sommier	Oct. 23	150

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NORTHPORT, CITY OF

Northport Ordinance	Edward D. Robertson	Dec. 15	127
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Occupational Information System—Liability of Directors	David E. Sawyer	Dec. 31	Occupational Information System
OFFICERS & OFFICES			
Chief of Police—Office Of Profit City Council Vacancy—	Larry Moody	Nov. 18	40
Highland Lake—Council Fills Assistant District Attorney—	Thomas L. Rountree	Nov. 17	60
Municipal Judge	Kirtley W. Brown	Nov. 5	77
Gadsden Policemen's/Firemen's Fund—Board Vacancy	Steve Means	Dec. 23	158
ORDINANCES			
Ordinance—Making Cited Debt A Misdemeanor—Unconstitutional	Willard O. Jackson	Oct. 2	2
Occupational License Fee Records—Five Years	L. B. Davidson	Oct. 20	64
Drinking In Parked Car—	Alexy E. Saliba	Dec. 15	100
City Ordinance			
Northport Ordinance—Truck Weight Limits	Edward D. Robertson	Dec. 15	127
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PARKS			
County Funds—Public Parks	John M. McSwean	Nov. 7	121

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County Commissions—Child			
Support Enforcement Program	Ira H. Weissinger	Dec. 16	48
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County Hospital—Offices For Doctors	David T. Hyde, Jr.	Oct. 2	3
PISTOL PERMIT FUND			
Calhoun County—Pistol Permit			
Fund—Clerk's Salary	Roy C. Snead, Jr.	Nov. 20	37
PLANNING & DEVELOPMENT COMMISSIONS			
Central Ala. Planning			
Commission—"Aging Consortium"	William F. Joseph, Jr.	Oct. 9	9
County Planning Commission—			
Exempt Sales & Use Tax	Don Priori	Nov. 25	74
Land Condemnation by City—Recreation	Lewis F. Duckworth	Oct. 9	75
PLUMBERS			
Lauderdale County—Board Of Plumbers	James Putman	Dec. 3	58
POLICE OFFICERS			
Campus Police—Power and Jurisdiction	Carl C. Knowles	Nov. 12	24
POLITICAL PARTIES			
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State Inmates—To County Jails	Hobson Manasco, Jr.	Dec. 19	126
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PROBATE JUDGES			
Fee Schedule—License Commissioner—Mobile County	Thornton Price-Williams	Dec. 30	95
PSYCHOLOGY, BOARD OF EXAMINERS			
Oral Exams—Licensure	Judy E. Hall	Nov. 12	Psychology Bd. of Examiners
Psychology, Board of Examiners—Assistants to Psychologists	Judy E. Hall	Nov. 17	Psychology Bd. of Examiners
PUBLIC HEALTH DEPARTMENT			
Medicaid Division—Issuance Of October Cards	Ira L. Myers	Oct. 3	Public Health Dept.
PUBLIC MEETINGS			
Boards of Education—Executive Session	James T. Willoughby	Oct. 22	8

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Confidential Records—Rehabilitation & Crippled Children Service	Wayne Teague	Oct. 20	Educ. Dept.
Traffic Offense Records—Release	E. C. Dothard	Dec. 23	Public Safety Dept.
PUBLIC SAFETY DEPARTMENT			
Vehicle Weight Law—1975 Act	E. C. Dothard	Oct. 2	Public Safety Dept.
Public Safety—Communications Officers—Act 206	E. C. Dothard	Nov. 10	Public Safety Dept.
Traffic Offense Records—Release	E. C. Dothard	Dec. 23	Public Safety Dept.
PUBLICITY & INFORMATION DEPT. OF			
Contract Employees—No Leave Benefits	Douglas O. Benton	Oct. 28	Publicity & Info.
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REAL ESTATE COMMISSION			
Real Estate Broker—Closing Of Sale	Mary L. Goodwin	Oct. 9	Real Estate Comm.
REAPPRAISAL			
Reappraisal Warrants—			
Pro Rata Costs Withheld	John M. Fleming, Jr.	Nov. 14	42
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Conecuh County—Retirement			
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Contributions Under HB 43	David G. Bronner	Oct. 17	Retirement Systems
Teacher Disability Retirement—			
30 Years—Conversion to Regular	David G. Bronner	Oct. 17	Retirement Systems
HB 38—Teacher's Retirement			
System—Prior Service	David G. Bronner	Oct. 17	Retirement Systems
Retired Judges Pay—Active Service	David G. Bronner	Oct. 10	Retirement Systems
Judicial Retirement Systems—			
Contributions From Oct. 1, 1945	David G. Bronner	Dec. 4	Retirement Systems
State Retirement Systems—			
Military Service Credit	David G. Bronner	Dec. 18	Retirement Systems

State Trooper—Retiring Prior to Age 56	David G. Bronner	Dec. 11	Retirement Systems
REVENUE, DEPT. OF			
Social Security Numbers—			
Taxpayers—Privacy Act of 1974	Charles A. Boswell	Nov. 19	Revenue Dept.
ROADS, HIGHWAYS & BRIDGES			
“Captive” County—Road			
Construction/Repair	Bruce Gargis	Dec. 22	19
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SALARIES			
Macon County—Deputy			
Clerks—Salaries	Fred D. Gray	Nov. 20	27
SCHOOLS			
State Supt. of Education—			
Distributes Educational Funds	Wayne Teague	Oct. 10	Educ. Dept.
School Fees—Unconstitutional	J. Revis Hall	Dec. 29	58
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With Broker Dealers	Thomas L. Krebs	Oct. 29	Securities Comm.
SHELBY COUNTY			
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Shelby County	James Edwards	Oct. 6	21
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Resident Telephone—Sheriff	James Record	Dec. 1	43
SOCIAL SECURITY			
Social Security Numbers— Taxpayers—Privacy Act of 1974	Charles A. Boswell	Nov. 19	Revenue Dept.
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County Solicitor—No Private Criminal Law Practice	T. Dudley Perry	Dec. 17	53
SOLID WASTE DISPOSAL ACT			
Lease Purchase Agreement— Solid Waste Disposal Equipment	R. L. Harbison	Dec. 15	49
SUPERNUMERARY POSITIONS			
County Solicitor/Assistant D. A.—Supernumerary D. A.	George C. Wallace	Oct. 8	Governor Office
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TAX ASSESSORS			
Ad Valorem—Assessment Error Binding at End of Fiscal Year	Sara R. McMullen	Nov. 24	69

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TAXATION			
Rental Tax—Act No. 96, 1971			
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County Planning Commission—			
Exempt Sales & Use Tax	Don Priori	Nov. 25	74
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Manufactured Goods	Willie J. McKnight	Dec. 22	96
TEACHERS			
Hospital/Medical Insurance—Teachers	Charles H. Payne	Oct. 15	Insurance Dept.
Teacher Disability Retirement—			
30 Years—Conversion to Regular	David G. Bronner	Oct. 17	Retirement Systems
HB 38—Teacher's Retirement			
System—Prior Service	David G. Bronner	Oct. 17	Retirement Systems
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To Board of Education	Uralee A. Haynes	Oct. 23	41
TOXICOLOGY DEPARTMENT			
State Employees—Per Diem—			
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Toxicology Dept.—Return of Evidence	C. J. Rehling	Dec. 17	Toxicology Dept.
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Tuscaloosa County—Deputy			
Sheriff Compensation	Martin Ray	Nov. 7	39

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Colbert County—Voter Reidentification	Tom C. Coburn — W —	 Nov. 20	 63
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Alabama Wage Commission— No Proxy Voting	Tom Ventress	Dec. 12	Industrial Relations
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Surface Mining Act of 1975— Smith Lake/Little River Canyon	James W. Warr	Dec. 4	WIC

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